

Ex. A - Plaintiff's Motion to Amend Complaint

Trinity Electric and Controls v. Fairway Ford, Inc.

6:20-cv-3120-TMC

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Civil Action Number: 6-20-cv-3120-TMC

Trinity Electric and Controls and)	
John M. Kennedy,)	
)	
Plaintiffs,)	
)	
v.)	AMENDED COMPLAINT
)	
Fairway Ford, Inc.)	
)	
Defendant.)	
)	
)	
)	

Plaintiffs, Trinity Electric and Controls, Inc. ("Trinity") and John M. Kennedy ("Kennedy"), complaining of Defendant Fairway Ford, Inc. ("Fairway") would respectfully allege and show to the Court as follows:

Parties and Jurisdiction

1. Trinity is a business located in the State of North Carolina and, at all times mentioned herein, was transacting business in Greenville County, South Carolina.
2. Kennedy is a resident of Hendersonville, North Carolina and is the President of Trinity.
3. Defendant Fairway, upon information and belief, is a South Carolina corporation with its principal place of business being located at 2323 Laurens Road, Greenville, SC 29607.
4. The subject contract of this action was performed in Greenville, South Carolina.
5. Jurisdiction is proper in this Court.

6. Venue is proper in this Court because the actions complained of took place within Greenville Division.

Statement of Facts

7. On or about March 14, 2018, Fairway took an order from Plaintiffs for a F-250 4x4 Crew Cab pickup truck with the MSRP of \$51,365.00. See Ex. A – preview order.
8. On or about June 6, 2018, Fairway Ford entered into a retail buyers order with Trinity Electric and Controls, Inc. for a 2018 Ford F250 Lariat pick-up, VIN 1FT7W2861JEC52290, mileage 25. See Ex. B, Retail Buyers Order. Trinity paid a total of \$64,112.06 for the truck, including \$20.00 for license and title.
9. Plaintiffs traded in a 2017 Ford F150 XLT pick-up and received a trade allowance of \$27,500.00. See Ex. B, Retail Buyers Order.
10. The Retail Buyers Order indicates that Fairway Ford had the information concerning Plaintiffs' insurance agent Matt Gambrell of State Farm located in Hendersonville, North Carolina and that it had spoken to Mr. Gambrell. See Ex. B, Retail Buyers Order.
11. On or about June 15, 2018, a tax and fee summary issued by the State of North Carolina for account number 1078101, Trinity Electric and Controls Inc., VIN 1FT7W2B61JEC52290, indicates that the fees and taxes were paid for this vehicle on June 15, 2018 in the amount of \$966.20. See Ex. C tax and fee summary.
12. On or about June 21, 2018, Al Cole, Commercial/Fleet manager for Fairway Ford informed John Kennedy that Fairway Ford was required to do the tag work since there is a lien on the truck. Cole stated Fairway had already submitted the tag work and said he needed the insurance policy number as well as an additional \$966.20. See Ex. D, 6/21/18 email from Al Cole to John Kennedy.

13. On or about September 6, 2018, three months after the purchase of the 2018 vehicle, Al Cole with Fairway Ford emailed Kennedy and stated he was to sign where highlighted and take to DMV. On September 11, 2018, Kennedy emailed Cole with several questions concerning the status of the 2018 Ford F-250. See Ex. E September 11, 2018 email thread between John Kennedy and Al Cole.
14. On May 10, 2019, E. Brooks, a title clerk with Ford Credit, send a letter to Trinity concerning 2018 Ford pick-up truck. The letter stated that Ford Motor Credit Company had not received the Certificate of Title and Trinity was directed to contact the originating dealer as soon as possible so that the title may be obtained for the vehicle. In another letter on the same date Ford Credit informed Trinity that the Certificate of Title may have been sent to Trinity from the Department of Motor Vehicles and that the Certificate contained an error in that the lienholder's name should be Ford Motor Credit Company. See Ex. F, May 10, 2019 letter from Ford Credit to Trinity Electric and Controls.
15. On or about September 13, 2019, Al Cole, Commercial/Fleet manager for Fairway Ford, told John Kennedy a different story. Cole stated that Fairway Ford did not charge Trinity for the taxes and tag on the 2018 F250 because Kennedy told them he was going to do it. Cole stated that the trade-in was still in Fairway Ford's possession. He admitted Kennedy had signed the trade-in to Fairway Ford, but that Fairway could not pay it off until it was registered. Cole then stated that Fairway was handling the new plate registration and that it would be filed when Fairway can pay off the trade-in. See Ex. G, 9/13/19 email from Al Cole to John Kennedy.

16. On or about September 19, 2019, Al Cole sent John Kennedy an email stating, "If you will send me the paperwork back, we can do the tag work and you can reimburse us." See. Ex. H, 9/19/19 email from Al Cole to John Kennedy.
17. After receiving emails from David Charles, Commercial Vehicles Department Sales Manager for Fairway Ford that insinuated that the failure to register and pay the taxes on the vehicle was Mr. Kennedy's fault, Mr. Kennedy sent Mr. Charles an email response, putting him on notice of the damages Trinity had suffered in this transaction. Fairway Ford did not respond and attempt to mitigate damages. See. Ex. I, 10/1/19 email thread between John Kennedy and David Charles.
18. Due to Fairway Ford's failure to register the F-250 pickup, Plaintiffs' were not able to use the truck in its business, despite paying Ford Credit \$1,100 a month for the truck.
19. Plaintiffs never had full and free use of the F-250 pickup as contemplated when it purchased the truck.
20. On August 30, 2019, Kennedy purchased for Trinity a 2019 F-150 pickup from Fairway Ford. During the purchase of this truck, which involved the trade-in of the 2018 F-250 pickup, it was revealed that Fairway Ford had not taken care of the registration and payment of the taxes for the 2018 vehicle. See Ex. J – Retail Buyers Order dated 8/31/2019.
21. Further, the same problem with payment of the taxes and registration has occurred with the 2019 vehicle. At present, the 2019 vehicle is in Plaintiffs' possession, but Plaintiffs are unable to drive it due to it being unregistered.
22. At present Plaintiffs claim over \$75,000 in actual and consequential damages, due to Fairway Ford's breach of contract.

**For a First Cause of Action
Breach of Contract**

23. Plaintiffs reallege the foregoing paragraphs as if fully restated herein.
24. Plaintiffs entered into a contract in June 2018 for the purchase of a 2018 F-250 Ford pick-up. Plaintiffs also entered into a contract in September 2019 in which the 2018 vehicle would be traded in for a 2019 F-150 pick-up.
25. Defendant breached the contracts in failing to pay the registration and taxes on the vehicle despite Plaintiffs' payment for these services.
26. In so doing, Defendant's breach has caused additional expense and loss of work due to the fact it did not have use of the vehicles.
27. Plaintiffs are entitled to actual and consequential damages.

WHEREFORE: Plaintiffs pray for the following relief:

1. Actual damages,
2. Consequential damages, and
3. For such other and further relief as the Court may deem just and proper.

Respectfully submitted.

V. ELIZABETH WRIGHT LAW FIRM, LLC

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September 17, 2020

Greenville, South Carolina